

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BANK OF AMERICA, N.A.,
PLAINTIFF,

V.

SUSIE M. ESTRADA,
DEFENDANT.

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CAUSE NO. 1:20-CV-196-LY

ORDER

Before the court in the above-styled and numbered cause is Defendant Susie M. Estrada's Motion to Dismiss for Lack of Subject Matter Jurisdiction under Rule 12(b)(1); Personal Jurisdiction under Rule 12(b)(2); Failure to State a Claim under Rule 12(b)(6); Failure to Join a Party under Rule 12(b)(7)/Rule 19; and Motion to Dismiss for Forum Non Conveniens filed March 12, 2020 (Doc. #5) and all related filings.

The motion was referred to a United States Magistrate Judge for report and recommendation. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72; Loc. R. W.D. Tex. App'x C, R. 1. The magistrate judge signed a report and recommendation on February 26, 2021 (Doc. #14), recommending that this court grant in part and deny in part Estrada's motion to dismiss. Specifically, the magistrate judge recommends that the motion be granted as to the breach of contract claim, and that claim should be dismissed with prejudice. The magistrate judge recommends the motion should be denied in all other respects.

A party may serve and file specific written objections to the proposed findings and recommendations of a magistrate judge within 14 days after being served with a copy of the report and recommendation and thereby secure *de novo* review by the district court. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a report and recommendation bars that

party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Services Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

The record shows that all parties had notice of the report and recommendations by February 26, 2021, and that objections were due on or before March 12, 2021. Plaintiff Bank of America, N.A. ("Bank of America") filed objections to the report and recommendation on March 12, 2021 (Doc. #15). In light of the objections, the court undertakes a *de novo* review of the record and applicable law.

The court is of the opinion that the objections do not raise issues that were not adequately addressed in the report and recommendation. Therefore, finding no error, the court accepts and adopts the report and recommendation filed in this case for substantially the reasons stated therein. Accordingly,

IT IS ORDERED that Bank of America's objections (Doc. #15) to the report and recommendation of the United States Magistrate Judge are **OVERRULED**.

IT IS FURTHER ORDERED that the report and recommendation of the United States Magistrate Judge (Doc. #14) is **ACCEPTED AND ADOPTED** by the court.

IT IS FURTHER ORDERED that Estrada's motion to dismiss (Doc. #5) is **GRANTED IN PART** and **DENIED IN PART**. Specifically, the motion is **GRANTED** as to the breach of contract claim, which is **DISMISSED WITH PREJUDICE**. In all other respects, the motion is **DENIED**. Bank of America's sole remaining claim is the claim for declaratory judgment.

SIGNED this 23rd day of March, 2021.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE